

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1763

Introduced by Assembly Member Davis

February 17, 2012

An act to amend Sections 781 and 923 of the Penal Code, relating to grand jury proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, as amended, Davis. Grand jury proceedings: Attorney General: powers and duties.

Existing law authorizes the Attorney General to convene the grand jury to investigate and consider certain criminal matters. The Attorney General is authorized to take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do. Existing law authorizes the Attorney General to ~~empanel~~ *impanel* a special grand jury to investigate, consider, or issue indictments for specified activities relating to Medi-Cal fraud.

This bill also would authorize the Attorney General to convene a special *statewide* grand jury, as prescribed, for cases involving fraud or theft that ~~occurs~~ *occur* in more than one county ~~and where all potential charges could not otherwise be brought in a single county~~ and were conducted by a single defendant or multiple defendants acting in concert. ~~The bill would establish the Attorney General's Special Grand Jury Fund in the State Treasury and would require each defendant~~

~~convicted of charges brought by a special grand jury to pay a fine of \$500 into that fund to be used upon appropriation of the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 781 of the Penal Code is amended to
2 read:

3 781. Except as provided in Section 923, when a public offense
4 is committed in part in one jurisdictional territory and in part in
5 another, or the acts or effects thereof constituting or requisite to
6 the consummation of the offense occur in two or more jurisdictional
7 territories, the jurisdiction of the offense is in any competent court
8 within either jurisdictional territory.

9 SEC. 2. Section 923 of the Penal Code is amended to read:

10 923. (a) Whenever the Attorney General considers that the
11 public interest requires, he or she may, with or without the
12 concurrence of the district attorney, direct the grand jury to convene
13 for the investigation and consideration of those matters of a
14 criminal nature that he or she desires to submit to it. He or she may
15 take full charge of the presentation of the matters to the grand jury,
16 issue subpoenas, prepare indictments, and do all other things
17 incident thereto to the same extent as the district attorney may do.

18 (b) Whenever the Attorney General considers that the public
19 interest requires, he or she may, with or without the concurrence
20 of the district attorney, petition the court to impanel a special grand
21 jury to investigate, consider, or issue indictments for any of the
22 activities subject to fine, imprisonment, or asset forfeiture under
23 Section 14107 of the Welfare and Institutions Code. He or she
24 may take full charge of the presentation of the matters to the grand
25 jury, issue subpoenas, prepare indictments, and do all other things
26 incident thereto to the same extent as the district attorney may do.
27 If the evidence presented to the grand jury shows the commission
28 of an offense or offenses for which jurisdiction would be in a
29 county other than the county where the grand jury is impaneled,
30 the Attorney General, with or without the concurrence of the
31 district attorney in the county with jurisdiction over the offense or
32 offenses, may petition the court to impanel a special grand jury in
33 that county. Notwithstanding any other ~~provision of law~~, upon

request of the Attorney General, a grand jury convened by the Attorney General pursuant to this subdivision may submit confidential information obtained by that grand jury, including, but not limited to documents and testimony, to a second grand jury that has been impaneled at the request of the Attorney General pursuant to this subdivision in any other county where venue for an offense or offenses shown by evidence presented to the first grand jury is proper. All confidentiality provisions governing information, testimony, and evidence presented to a grand jury shall be applicable, except as expressly permitted by this subdivision. The Attorney General shall inform the grand jury that transmits confidential information and the grand jury that receives confidential information of any exculpatory evidence, as required by Section 939.71. The grand jury that transmits information to another grand jury shall include the exculpatory evidence disclosed by the Attorney General in the transmission of the confidential information. The Attorney General shall inform both the grand jury transmitting the confidential information and the grand jury receiving that information of their duties under Section 939.7. A special grand jury convened pursuant to this subdivision shall be in addition to the other grand juries authorized by this chapter or Chapter 2 (commencing with Section 893).

(c) Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, impanel a special *statewide* grand jury to investigate, consider, or issue indictments in matters in which there are multiple activities, in which fraud or theft is a material element, that have occurred in more than one county, and *were* conducted either by a single defendant or multiple defendants acting in concert.

(1) This special *statewide* grand jury may be impaneled in the Counties of Fresno, Los Angeles, Sacramento, San Diego, or San Francisco, at the Attorney General's discretion. ~~A special grand jury impaneled under this section shall serve for a term of 18 months unless dismissed earlier by the Attorney General. Upon notice by the Attorney General to the grand jury coordinator or presiding judge of the county where the special grand jury is impaneled, the special grand jury's term can be extended by up to six months. This special grand jury is subject to the requirements of Sections 888.2, 893 and 940. When impaneling a special~~

1 *statewide grand jury pursuant to this subdivision, the Attorney*
2 *General shall use an existing regularly impaneled grand jury to*
3 *serve as the special statewide grand jury and make arrangements*
4 *with the grand jury coordinator in the applicable county, or with*
5 *the presiding judge or whoever is charged with scheduling the*
6 *grand jury hearings, in order to ensure orderly coordination and*
7 *use of the grand jurors' time for both regular grand jury duties*
8 *and special statewide grand jury duties. Whenever the Attorney*
9 *General impanels a special statewide grand jury, the prosecuting*
10 *attorney representing the Attorney General shall inform the special*
11 *statewide grand jury at the outset of the case that the special grand*
12 *jury is acting as a special statewide grand jury with statewide*
13 *jurisdiction.*

14 (2) For special *statewide* grand juries impaneled pursuant to
15 this subdivision, the Attorney General may issue subpoenas for
16 documents and witnesses located anywhere in the state in order to
17 obtain evidence to present to the special *statewide* grand jury. The
18 special *statewide* grand jury may hear all evidence in the form of
19 testimony or physical evidence presented to the special *statewide*
20 grand jury, irrespective of the location of the witness or physical
21 evidence prior to subpoena. The special *statewide* grand jury
22 impaneled pursuant to this subdivision may indict a person or
23 persons with charges for crimes that occurred in counties other
24 than where the special *statewide* grand jury is impaneled. The
25 indictment shall then be submitted to the appropriate court in any
26 of the counties where any of the charges could otherwise have
27 been properly brought. The court where the indictment is filed
28 under this subdivision shall have proper jurisdiction over all counts
29 in the indictment.

30 (3) Notwithstanding Section 944, an indictment found by a
31 special *statewide* grand jury and endorsed as a true bill by the
32 special *statewide* grand jury foreperson, may be presented to the
33 appropriate court, as set forth in paragraph (2), solely by the
34 prosecutor and within five court days of the endorsement of the
35 indictment. For indictments presented to the court in this manner,
36 the prosecutor shall also file with the court or court clerk, at the
37 time of presenting the indictment, an affidavit signed by the special
38 *statewide* grand jury foreperson attesting that all the jurors who
39 voted on the indictment heard all of the evidence presented by the
40 prosecutor, and that a proper number of jurors voted for the

1 indictment pursuant to Section 940. The Attorney General's Office
2 shall be responsible for prosecuting an indictment produced by
3 the special *statewide* grand jury.

4 (4) If a defendant makes a timely and successful challenge to
5 the Attorney General's right to convene a special *statewide* grand
6 jury by clearly demonstrating that the charges brought are not
7 encompassed by this subdivision, the court shall dismiss the
8 indictment without prejudice to the Attorney General, who may
9 bring the same or other charges against the defendant at a later
10 date by way of another special *statewide* grand jury, properly
11 convened, or a regular grand jury, or by any other procedure
12 available.

13 (5) The provisions of Section 939.71 shall apply to the special
14 *statewide* grand jury.

15 (6) Unless otherwise set forth in this section, a law applying to
16 a regular grand jury impaneled pursuant to Section 23 of Article
17 I of the California Constitution shall apply to a special *statewide*
18 grand jury unless the application of the law to a special *statewide*
19 grand jury would substantially interfere with the execution of one
20 or more of the provisions of this section. If there is substantial
21 interference, the provision governing the special *statewide* grand
22 jury will govern.

23 (7) A special *statewide* grand jury convened pursuant to this
24 subdivision shall be in addition to the other grand juries authorized
25 by this chapter or Chapter 2 (commencing with Section 893).

26 (d) ~~(4)~~ Upon certification by the Attorney General, a statement
27 of the costs directly related to the impanelment and activities of
28 the grand jury pursuant to subdivisions (b) and (c) from the
29 presiding judge of the superior court where the grand jury was
30 impaneled shall be submitted for state reimbursement of the costs
31 to the county. To be reimbursed, the costs shall be itemized, and
32 be no more than what would be charged to a regularly impaneled
33 grand jury convened by the county pursuant to Section 23 of Article
34 I of the California Constitution, unless an alternative payment
35 arrangement is agreed upon by the county and the Attorney
36 General.

37 ~~(2) A defendant convicted on charges brought by a special grand~~
38 ~~jury pursuant to this section shall pay a fine of five hundred dollars~~
39 ~~(\$500), which shall be assessed by the court and transmitted to the~~
40 ~~Attorney General's Special Grand Jury Fund, which is hereby~~

- 1 established in the State Treasury to be used upon appropriation of
- 2 the Legislature.

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